IN THE

Supreme Court of the United States

JAN 2 1974
MICHAEL RODAK, JR., CLERK

October Term, 1973
No. 73-884

DELORES MENDOZA, *et al.*,

Petitioners,

vs.

UNITED FARM WORKERS ORGANIZING COMMITTEE, *et al.*,

Respondents.

Response in Opposition to Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

JAMES VANCE HENRY,
900 "M" Street,
Fresno, Calif. 93721,
(209) 233-6571,
Attorney for Respondents.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

IN THE

Supreme Court of the United States

October Term, 1973
No. 73-884

DELORES MENDOZA, *et al.*,

Petitioners,

vs.

UNITED FARM WORKERS ORGANIZING COMMITTEE, *et al.*,

Respondents.

Response in Opposition to Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Questions Presented.

1. Does enforcement by respondent labor organization and employers of their collective bargaining contract involve state action by California, whose statutes and decisional law in general have authorized, approved, and encouraged the institution of the "union shop"?

2. Is an agreement requiring membership "following seven (7) continual calendar days of employment" in itself violative of any right of association or right to work protected by the United States Constitution?

Statement of the Case.

Petitioners do not allege that the contract in question requires "compulsory full union membership as a condition of employment."

Petitioners' reference to the union boycott is burdensome, irrelevant, immaterial matter.

Petitioners do not allege that they have been denied employment because they have been refused membership in respondent union after making request therefor.

Petitioners Do Not Allege Facts Sufficient to State a Claim.

A fair reading of the Court of Appeals' decision reveals that Court in no sense applies a test of "compulsion of state law." *Shelley v. Kraemer*, 334 U.S. 1 (1947), established a state action standard—significant, unambiguous involvement in a particular transaction —from which the Court has never retreated. Rather than showing some immediate and direct effect of state activity, petitioners show only the probabilities of how some court in California might some day deal with the collective bargaining agreement in question.

This Court recently held in *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972), that state activity much more direct and substantial than the involvement in the present case was insufficient to state a claim under the Constitution; even a state's detailed regulation and licensing with quotas imposed does not represent state action where the precise rules or conditions limiting conduct are voluntarily agreed upon by the private parties engaged in private affairs.

It is indisputable that California in its statutes and case law has maintained a strict policy of neutrality towards collective bargaining matters and has simply attempted "to balance the industrial equation, so far as it is possible to do so, by placing employer and employee on an equal basis," *Shafer v. Registered Pharmacists Union Local 1172*, 16 Cal. 2d 379 (1940). Section 923 of the California Labor Code, set out at page 5 of the Petitioners' Appendix, states that governmental authority "has permitted and encouraged employers to organize in the corporate and other forms of capital control," and so therefore it "is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment."

The language from *Railway Employees Dept. AFL v. Hanson*, 351 U.S. 225 (1956), quoted by Petitioners at page 8 of their brief, is the explanation by this Court of its agreement with a statement of the Nebraska high court. In its opinion the Nebraska Supreme Court had referred to the 17 states which at the time of Congress' action had right-to-work provisions. Thus, the action of Congress in *Hanson* had cut across state law already in effect, permitting contracts that otherwise would be outlawed by the states' statutes.

In contrast to Petitioners' statement at page 12, there is no analogy between California Supreme Court action and the *Hanson* facts. In the California cases cited in support of Petitioners' contention, the California Court merely shielded agreements from nullification by local laws enacted subsequent to formalization by the legislature of the state's traditional hands-off policy.

No Important Constitutional or Public Question Is Stated.

The *Hanson* case, *supra,* demonstrates that constitutional issues do not arise alone out of the terms of contracts or out of union constitutions. See *Hanson* at footnotes 7, 8, and 9 and the text they amplify. Here, as in *Hanson,* Petitioners protest against what is comparable to the requirement in some states that a lawyer become a member of an integrated bar. 351 U.S. at 238.

Moreover, in finding that Congress' choice of the union shop as a stabilizing force was proper, this Court in *Hanson* noted that the right to work must be looked at in terms of "long-range interests of workers." 351 U.S. at 234.

> "One would have to be blind to history to assert that trade unionism did not enhance and strengthen the right to work . . . To require, rather than to induce, the beneficiaries of trade unionism to contribute to its costs may not be the wisest course. But Congress might well believe that it would help insure the right to work. . . ." *Hanson, supra,* 351 U.S. at 235.

Conclusion.

For all these reasons this Court should not issue a writ of certiorari.

December 28, 1973.

Respectfully submitted,

JAMES VANCE HENRY,
Attorney for Respondents.